

S.D.N.Y.—N.Y.C.  
10-cv-1680  
04-cr-664  
Griesa, J.  
Forrest, J.

# MANDATE

United States Court of Appeals  
FOR THE  
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 12<sup>th</sup> day of September, two thousand sixteen.

Present:

Dennis Jacobs,  
Barrington D. Parker,  
*Circuit Judges,*  
Jane A. Restani,\*  
*Judge, U.S. Court of International Trade.*

**USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: November 10, 2016**

Cesar Castro,

*Petitioner,*

v.

16-2317

United States of America,

*Respondent.*

Petitioner moves for leave to file a successive 28 U.S.C. § 2255 motion. Upon due consideration, it is hereby ORDERED that the motion is DENIED because Petitioner has not satisfied the criteria set forth in 28 U.S.C. § 2255(h). Petitioner does not provide most of the newly discovered evidence he relies on, and does not demonstrate that it could not have been discovered by due diligence prior to his first § 2255 motion. In any event, Petitioner has not shown that the new evidence, “if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found [Petitioner] guilty of the offense.” 28 U.S.C. § 2255(h)(1).

FOR THE COURT:  
Catherine O’Hagan Wolfe, Clerk

A True Copy

Catherine O’Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit

*Catherine O'Hagan Wolfe*

*Catherine O'Hagan Wolfe*

\* Judge Jane A. Restani, of the United States Court of International Trade, sitting by designation.

**MANDATE ISSUED ON 11/10/2016**